In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 120

CHEYENNE RIVER SIOUX TRIBE OF INDIANS, PETITIONER

v.

UNITED STATES OF AMERICA AND PETER HIATT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The Act of September 3, 1954, 68 Stat. 1191, embodies an agreement between the Cheyenne River Sioux Tribe and the United States governing the compensation to be paid by the United States for land taken in order to construct the Oahe Dam Project in South Dakota. Pursuant to this agreement, the sum of $5,384,014 was to "be deposited to the credit of said Tribe in the Treasury of the United States * * *." Part of this sum—$2,250,000—was to be distributed by the Tribe to individual Indians in accordance with appraisals of the individual's property. Any Indian dissatisfied with the amount thus due him, might, under the agreement, reject payment of the appraised amount by notifying the Chief

776-521—65

of Engineers, United States Army, "who shall thereupon file a proceeding in the United States District Court of the District of South Dakota as in a condemnation proceeding and jurisdiction is hereby conferred upon said Court to determine, by procedure corresponding to a condemnation proceeding, the value of said land * * *." Should such a suit be instituted by the United States, the Tribe was to deposit the appraised amount with the court and, should the final judgment in the condemnation proceeding be greater than the appraised amount, "the United States shall pay such difference from the fund of $5,384,014" on deposit in the Treasury to the credit of the Tribe.

In this case an individual Indian, Peter Hiatt, rejected the appraisal of his land. In the subsequent condemnation proceeding brought against him by the United States, he received a judgment which was $10,620.83 (plus interest) greater than the appraised amount. The Tribe, which had sought unsuccessfully to intervene as of right in the condemnation proceeding, brought the present separate action against the United States to set aside and permanently enjoin enforcement of the condemnation judgment on the grounds (1) that the Tribe was an indispensable party to the condemnation proceeding and (2) that interest had improperly been included in the condemnation judgment. The Tribe's claim was rejected by both the district court and the court of appeals.

The decisions below are clearly correct. The agreement embodied in the statute provides that the condemnation suit is to be brought and prosecuted by the

United States against the complaining individual land owner. No provision was made for the Tribe's participation in the litigation. As a party to this agreement, the Tribe is bound by it. As the court of appeals found, 338 F. 2d 906, 911, "[t]here is no claim of fraud, collusion or bad faith on the part of the Government, and indeed from the record brought here it appears that the Government diligently endeavored to protect the rights and interests of the Tribe." There is therefore no basis for collateral attack by the Tribe on the condemnation judgment rendered in accordance with the terms of the agreement between the Tribe and the United States.

In addition, as the courts below held, the Tribe's claim to be an indispensable party is barred by principles of *res judicata*. This claim was fully litigated through the Tribe's attempt to intervene as of right in the condemnation suit and the Tribe took no appeal from the order denying intervention. See *Kozak* v. *Wells*, 278 F. 2d 104, 108 (C.A. 8).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

JUNE 1965.

U.S. GOVERNMENT PRINTING OFFICE : 1965